

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

MARJORIE & WALLACE SEVERNS,

Appellants,

v.

CITY OF SEATTLE AND STATE OF
WASHINGTON, DEPARTMENT OF
ECOLOGY,

Respondent.

SHB No. 91-30

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of the denial of a shoreline height variance request to build a three story, single-family residence, came on for formal hearing before the Board on September 13, 1991, at 8825 Rainier Avenue South, Seattle, Washington. Present for the Board were Members: Annette S. McGee, presiding, Chairman Harold S. Zimmerman, Nancy Burnett, Dave Wolfenbarger and Mark Erickson.

Attorney Brian K. Leonard represented Appellants Wallace and Marjorie Severns. Assistant City Attorney Pamela K. James represented Respondent City of Seattle. The Department of Ecology did not appear.

The proceedings were recorded by Louise M. Becker, court reporter with Gene Barker and Associates, Suite 406 Security Building, 203 East 4th Avenue, Olympia, WA 98501.

Witnesses were sworn and testified. Exhibits were admitted and examined. Opening arguments were made and closing arguments were

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1 submitted in writing. From the testimony heard, exhibits examined and
2 arguments of counsel, the Board makes the following:

3 FINDINGS OF FACT

4 I

5 Wallace and Marjorie Severns own a lot at 9614 Rainier Avenue
6 South, which is on the west shore of Lake Washington near the south
7 City limits. This lot is contiguous to other parcels on both sides,
8 which are developed with single family homes. The adjacent residence
9 to the south is one of the largest over water residences in the
10 vicinity, being well over 40 feet high, measured from the water. This
11 house was apparently built prior to the enactment of the present
12 Shoreline Master Program. The structure to the north is also built
13 over water, but is smaller, not exceeding 30 feet in height from the
14 water.

15 II

16 The Severns propose to construct a new single family residence,
17 with an accessory deck and pier, which would extend in part over the
18 water. The proposed residence would have 3,400 square feet of living
19 area, a 415 square foot deck and a 437 square foot garage. The front
20 of the residence along Rainier Avenue would be built to the property
21 line with no front setback. The rear of the house is proposed to
22 extend up to 43 feet above the water, with a sill height of 36 feet.
23 The height along the Rainier Street frontage would be approximately 15
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1 feet 6 inches above the elevation of the street.

2 The proposed home would be comprised of three levels, to
3 accommodate the grade change from the street to the Lake Washington
4 shoreline. The street level and first level below would each have
5 1,700 square feet of finished floor area. The lowest level would be
6 an open recreational deck below the first two levels. The Severns
7 designed the street level floor to be self-contained, and to allow
8 barrier free access to a living room, dining room, deck, two bedrooms,
9 kitchen, laundry and bathroom. The Severns have designed the home in
10 this fashion to accommodate possible needs in old age, should they
11 become less mobile. Included on the water level is a finger pier six
12 feet wide by 34 feet long.

13 III

14 The lot is zoned single-family (SF 5,000), with a shoreline
15 designation of Urban Residential (UR) on the dry land portion and
16 Conservancy Recreation (CR) environment of the submerged portion. The
17 parcel is comprised of 7,500 square feet with approximately 1,275
18 square feet of dry land and 6,225 square feet of submerged land. The
19 site has 50.04 feet of frontage on Rainier Avenue South. The site
20 slopes steeply downward from west to east and slightly downward from
21 north to south. The elevation change from the street property line to
22 the shoreline is 18 vertical feet over 25 horizontal feet.

1 Evidence indicated that during winter months the lot, improved or
2 unimproved, would receive significant shade from the structure
3 adjacent to the south. Likewise, the proposed structure would cause
4 shade on the house to the north.

5 IV

6 Under the applicable provisions of the Seattle Shoreline Master
7 Program (SSMP) which were in effect in 1979, new residential
8 structures constructed over water were prohibited. SSMP 21A.35. The
9 Severns procured a shoreline use variance from the City of Seattle in
10 December, 1979. This variance allowed them to construct a portion of
11 a residence over water, but limited the house's height to 35 feet
12 above average existing grade. DOE challenged the permit, and the
13 matter was heard before this Board. On review, the Board affirmed the
14 City's issuance of the variance to allow a residential structure over
15 water. SHB No. 80-2. The Board also affirmed the City's height limit
16 of no more than 35 feet. The house was never built.

17 V

18 The current SSMP was adopted February 1988. It is applicable to
19 the variance request for the new proposed structure over the water.
20 SSMC 23.60.390 et seq. (Development standards in the CR environment).
21 A single-family dwelling unit constructed partially over water is
22 permitted outright in the CR environment, provided it meets the test
23 set forth in SSMC 23.60.360(A). Under SMC 23.60.394, the maximum
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1 height permitted outright in the CR environment is 15 feet. The City
2 Council could allow a maximum height of 30 feet by conditional use
3 permit. The ridge of a pitched roof may extend five feet above these
4 two height limits. Any higher height limit would have to be approved
5 pursuant to a variance application.

6 VI

7 The Severns' proposed structure required the following approvals
8 from the City of Seattle:

9 1. City Council conditional use permit to exceed 15 foot
10 building height limit in a CR zone. (SMC 23.60.394(B)).

11 2. Shoreline variance to allow a single family residence to
12 exceed the 30 foot height limit allowed by council conditional use
13 approval in a CR environment. SMC 23.60.394(B).

14 3. A variance to allow parking in required front yard.

15 4. Variance to allow curb cut wider than 10 feet.

16 5. Shoreline substantial development permit to allow
17 construction of a single family pier. SMC 23.60.204.

18 The City council granted all of the above, except the shoreline
19 variance to allow a single family residence to exceed the 30 foot
20 conditional use height limit. This variance application was denied by
21 the City council, on the basis that the proposal failed to meet all of
22 the variance criteria of the SSMP. The variance criteria in the
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1 SSMP are identical to those of the State WAC variance criteria. WAC
2 173-14-150.

3 VII

4 A determination of non-significance was issued for the proposal
5 under the State Environmental Policy Act.

6 VIII

7 The evidence submitted indicates that the Severns could develop a
8 reasonable use of their property and stay within the approved 30 foot
9 height limit. Two levels of living space could be accommodated on the
10 site, if the recreation deck on the bottom floor was removed, and two
11 living spaces lowered so that the pitched roof height did not exceed
12 35 feet from the water. This would require that stairs be used to
13 gain access to both living levels.

14 IX

15 The cumulative effect of constructing a 43 foot high building
16 over the water on this site is likely to be adverse. The evidence
17 shows that such a structure would deprive the property to the north of
18 sunlight in the winter months in a significant way. The proposal
19 would impair the views of both adjacent properties. There also exists
20 undeveloped lots along Rainer Avenue, approximately one third of a
21 mile south of the Severns site. If similar heights were allowed on
22 those lots, shadow and view obstruction adverse effects could occur
23 there as well.

1 X

2 Any Conclusion of Law deemed to be a Finding of Fact, is hereby
3 adopted as such.

4 From these Findings of Fact, the Board makes the following:

5 CONCLUSIONS OF LAW

6 I

7 The Shorelines Hearings Board has jurisdiction in the instant
8 case. Chapter 90.58 RCW.

9 II

10 The Board reviews the proposal for consistency with the City of
11 Seattle Shoreline Master Program (SSMP) and the Shoreline Management
12 Act (Chapter 90.58 RCW). The burden is on the Appellant to prove that
13 a shoreline variance permit should be granted.

14 III

15 The central issue in this case is whether the variance criteria
16 of SMC 24.60.480, which adopts WAC 173-14-150 by reference, has been
17 met. Appellant has the burden of proving that all of the criteria
18 have been met. Policies of the Shoreline Management Act, RCW
19 90.58.020, for shorelines of state-wide significance must also be met.

20 IV

21 WAC 173-14-150, in pertinent part, reads as follows:

- 22 (2) Variance permits for development that will be
23 located landward of the ordinary high water
24 mark (OHWM), as defined in RCW 90.58.030(2)(b),
25 except within those areas designated by the
department as marshes, bogs, or swamps pursuant
to Chapter 173-22 WAC, may be authorized

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(7)

1 provided the applicant can demonstrate all of
2 the following:

- 3 (a) That the strict application of the bulk,
4 dimensional or performance standards set
5 forth in the applicable master program
6 precludes or significantly interferes with
7 a reasonable use of the property not
8 otherwise prohibited by the master program;
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10 (b) That the hardship described in WAC
11 173-14-150(2)(a) above is specifically
12 related to the property, and is the result
13 of unique conditions such as irregular lot
14 shape, size, or natural features and the
15 application of the master program, and
16 not, for example, from deed restrictions
17 or the applicant's own actions;
- 18 (c) That the design of the project is
19 compatible with other permitted activities
20 in the area and will not cause adverse
21 effects to adjacent properties or the
22 shoreline environment;
- 23 (d) That the requested variance does not
24 constitute a grant of special privilege
25 not enjoyed by the other properties in the
26 area, and is the minimum necessary to
27 afford relief; and
- (e) That the public interest will suffer no
substantial detrimental effect.

18 V

19 Denial of the variance and strict application of the height
20 limitation set forth in SMC 23.60.394 does not preclude a reasonable
21 use of the property not otherwise prohibited by the master program.
22 The Severns could construct a two story residence on the site without
23 the need for a height variance.
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1 VI

2 Approval of the variance would have an adverse cumulative impact,
3 should other similar requests in the area be granted. Such approvals
4 would likely cause adverse impacts of increased shade in the winter
5 months and obstruction of lake views.

6 VII

7 The hardship described by the Severns is the product of the
8 design desires of the applicants, and is not brought about by the
9 physical characteristics of the site. Entitlement to a variance
10 depends on the hardships imposed by the character of the property
11 itself, WAC 173-14-150, and is not related to the age or agility of
12 the applicant. The Board concludes the Severns' desire to have
13 handicap access to the top floor of the structure is the driving force
14 behind the variance request. This does not constitute a hardship to
15 support the granting of their request.

16 VIII

17 The design of the proposed project is not compatible with
18 neighboring uses, and, because of the height, the structure would
19 cause adverse impacts on adjacent properties, especially the property
20 to the north.

21 IX

22 As a result, all of the criteria for granting a variance are not
23 present in this case. Therefore, the denial of the Shoreline variance
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1 permit was proper.

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3 Any Finding of Fact which is deemed to be a Conclusion of Law is
4 hereby adopted as such.

5 From these Conclusions of Law, the Board enters the following:
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(10)

ORDER

The City of Seattle's denial of the Severns' shoreline variance permit application is AFFIRMED.

DONE this 3th day of November, 1991.

SHORELINES HEARINGS BOARD

Annette S. McGee
ANNETTE S. MCGEE, Presiding

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Chairman

Nancy Burnett
NANCY BURNETT, Member

Mark O. Erickson
MARK O. ERICKSON, Member

Dave Wolfenbarger
DAVE WOLFENBARGER, Member